

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JUN 24 1999

Plaintiff,

v.

HILDA IRENE SALAZAR-TARANGO.

**Defendant.**

*R. A. Rasmussen*  
CLERK

No. CIV-99-0470 BB/DJS  
CR-96-513 BB

## MEMORANDUM OPINION AND ORDER

This matter is before the Court *sua sponte* to review Defendant's motion for modification of sentence or to recommend deportation under 18 U.S.C. § 3582. Defendant pled guilty to one count of an indictment under 18 U.S.C. § 2 and 21 U.S.C. §§ 846 & 841 (b)(1)(B) (conspiracy to distribute heroine). Defendant alleges that she is a deportable alien and that she consents to immediate deportation. Because of her alien status, the Federal Bureau of Prisons considers her ineligible for a pre-release custody program authorized under 18 U.S.C. § 3624. Defendant argues that because she is ineligible for the six-month program, she is entitled to a downward departure under 18 U.S.C. § 3553(b). Her sentence calculation did not include the departure, and she asks that her 70-month term of imprisonment be reduced by the equivalent six-month period. The motion will be denied.

Defendant's alienage and consent to deportation are insufficient as a basis for the relief sought. "Unless specifically prohibited by the Sentencing Guidelines, any factor may be considered as a potential basis for departure." *United States v. Fagan*, 162 F.3d 1280, 1283 (10th Cir. 1998) (citing *Koon v. United States*, 518 U.S. 81, 109, 116 S.Ct. 2035, 2051 (1996)). Although consent

to deportation as a basis for departure “is not expressly forbidden, discouraged, or encouraged by the Sentencing Guidelines..., it is insufficient, as a matter of law, to warrant a downward departure.” *United States v. Clase-Espinal*, 115 F.3d 1054, 1057 (1st Cir.) (citing *Koon*, 518 U.S. at ---, 116 S.Ct. at 2045), *cert. denied*, --- U.S. ---, 118 S.Ct. 384 (1997). Defendant cites to a case which, she asserts, allowed the requested departure under the sentencing guidelines. *United States v. Smith*, 27 F.3d 649, 655 (D.C. Cir. 1994) (“downward departure may be appropriate where the defendant’s status as a deportable alien is likely to cause a fortuitous increase in the severity of his sentence”). Ineligibility for this program, however, does not increase the severity of Defendant’s sentence; it merely precludes reduction of the prison term imposed by the Court.

IT IS THEREFORE ORDERED that Defendant’s motion for modification of sentence or to recommend deportation under 18 U.S.C. § 3582 is hereby DENIED, and this civil proceeding is DISMISSED.

  
UNITED STATES DISTRICT JUDGE